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Ontario. Environmental Assessment Board.
EO-92-06(F)
GREEN LANE LANDFILL DECISION AND REASONS FOR DECISION...
1993.

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ENVIRONMENTAL ASSESSMENT BOARD

I. E. S.
APR 23 1993
RESOURCE CENTRE

EP-92-06(F)

GREEN LANE LANDFILL

DECISION AND REASONS FOR DECISION

IN THE MATTER OF the *Environmental Protection Act*, R.S.O. 1990, c. E-19 and the *Intervenor Funding Project Act*, R.S.O. 1990, c. I-13;

- and -

IN THE MATTER OF an application by Green Lane Landfill Limited, a division of St. Thomas Sanitary Collection Service Limited, for a five year interim expansion of the Green Lane Landfill site located on Part of Lots 21, 22 and 23, Concession III, Township of Southwold, Elgin County.

BEFORE: Alan Levy - Chairman

DATED at **TORONTO** this **6th** day of **APRIL, 1993.**

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BEFORE: Alan Levy - Chairman

APPEARANCES:

E. Anne Hiscock Andrew C. Wright	-	Green Lane Landfill, a division of St. Thomas Sanitary Collection Service Limited
Nancy Jack	-	for the Ministry of Environment and Energy
Thomas J. Corbett Robert MacLeod	-	Southwold Against Dumping Inc. (SAD)

REASONS FOR DECISION

1. Introduction

This matter arises out of a proceeding before the Environmental Assessment Board ("the Board") involving an application under s.30(1) of the *Environmental Protection Act* ("EPA") by the

proponent, St. Thomas Sanitary Collection Service Limited, operating as Green Lane Landfill. The proponent owns the property on which the existing Green Lane Landfill (formerly known as the Southwold Landfill) is located ("the site"), namely lots 21, 22 and 23, north of Highway 401, Concession III, the Township of Southwold ("the Township") in the County of Elgin ("the County").

The site was operated from June 1978 until it was closed in September 1991, after reaching its capacity. An estimated 1,014,125 m^3 of waste has been deposited at the site. In April 1992, the proponent applied for a certificate of approval to expand the landfilling operation at the same location, and operate it over a five-year period.

A funding panel ("the Panel") was appointed pursuant to the *Intervenor Funding Project Act* ("IFPA"), to determine applications for intervenor funding ("funding"), totalling $192,653.29, made by the following parties: Southwold Against Dumping Inc. ("SAD"), a local citizens' group, and Greta Thompson, who has resided next to the Ridge Landfill in Harwich Township for more than 20 years. The Ridge facility has been the recipient of the waste which could no longer be taken to the Green Lane Landfill as a result of its closure. SAD, a full-time party, has applied for $184,727.47 in order to retain legal counsel and consultants. Mrs. Thompson, a part-time party, has applied for $7,925.81 in order to retain legal counsel only.

A funding hearing was held on March 22, 1993 in the City of St. Thomas ("the City").

2. Background

During the period of its operation, the site received: domestic, commercial and solid non-hazardous waste from Elgin County; commercial, solid, non-hazardous waste within a 40 km radius of the site; up to 10% of its waste from outside of this service area; and sewage sludge from the City's Water Pollution Control Plant ("WPCP"). The service area included 17 local municipalities. Since the closure of the site for landfilling, it has been approved for and operated as a transfer station. Waste is brought to the site, compacted, and then transferred elsewhere.

The total site area is 129.6 ha (320 acres), of which 12.6 ha has been used for landfilling. After a hearing in 1978, approval was given to increase the footprint of the landfill to 20.6 ha. The area to be filled as part of the current expansion plan is 9.6 ha, comprised of 2.9 ha of filled

area (which will now receive additional waste) and an additional 6.7 ha. The expansion zone is located within the original remaining approved landfill area in the eastern and southeastern part of Lot 22.

The proposed volume of fill for the expanded fill area will be 1,169,000 m³, including daily and final cover. The proportion of refuse to daily cover will be 4:1. It is estimated that the site will have a capacity of 854,800 m³ of waste, or 534,250 tonnes, with an anticipated fill rate of 80,000 tonnes per annum. In contrast to the proponent's documentation, a summary of the proposal prepared by the Director of Approvals ("the Director") of the Ministry of Environment and Energy ("MOEE") indicates that the annual fill rate will be 100,000 tonnes (70,000 tonnes of domestic waste, and 30,000 tonnes of industrial/commercial waste).

The existing site has a leachate collection system ("LCS") which has been upgraded over time. The LCS is intended as a backup to natural attenuation. The leachate collected at the toe of the landfill is recirculated into the landfill. On average, 1.2 m³/day of leachate is pumped. The expansion area will also have a leachate collection system which will pump leachate into a 50,000 litre holding tank. From there, leachate will be transferred to tanker trucks and taken to the WPCP for treatment. The City has agreed to accept the leachate for treatment. It will be collected from both the existing and proposed sites, with an expected combined generation rate of 88.6 m³/day.

Advance Container of Canada Limited, located in near-by Lambeth, is a separate business which is allied with the proponent and carries on an industrial non-hazardous waste collection and recycling operation. Since 1990, the proponent and Advance Container have been engaged in an environmental assessment planning process. According to the Director's summary, the five-year expansion is required to allow the site to operate while the proponent "proceeds through the environmental assessment process for the site's long-term use".

The Minister of the Environment and Energy ("the Minister") decided that this application would not be designated under the *Environmental Assessment Act*, R.S.O. 1990, c. E-18 ("EAA"). In a letter dated February 28, 1992, which has been referred to by the proponent as the "non-designation order", the Minister attached several conditions to this decision: the proponent must proceed expeditiously with an EPA application, the period of operation will be limited to five years from the date of approval, the existing service area will continue to apply, the proponent must conduct effective and meaningful public consultation with respect to the EPA application

and the EAA process, and the proponent must encourage its clients to increase their 3-R's activities.

The Board held its first preliminary hearing on January 19, 1993, at which time party status was granted to the City, the County, the Township, SAD and Mrs. Thompson. SAD and Mrs. Thompson ("the applicants") were granted intervenor status under the IFPA by the Board. The City, County and Township support the proposed undertaking. The Director and Mrs. Thompson take a neutral position, while SAD is opposed. A representative of Browning Ferris Industries Ltd., the owner of the Ridge Landfill, appeared at the preliminary hearing and indicated that it was opposed to the undertaking on the basis of lack of need. It requested part-time party status. However, the company has since chosen to withdraw as a party and will not participate at the hearing.

In its Interim Procedural Directions, dated February 16, 1993, the Board, among other things:

- identified a list of preliminary issues for consideration at the hearing,
- scheduled a funding hearing, if required, for March 22,
- scheduled the hearing of evidence to commence on May 10.

Although the parties anticipated that the hearing would last approximately 4-5 weeks, the Board set an objective of four weeks (16 days). A second preliminary hearing was conducted on March 9.

In advance of the funding hearing, the proponent advised the applicants and the Panel that it agreed to be named funding proponent under s.6 of the IFPA.

3. The Application of Southwold Against Dumping Inc.

SAD's application requested funding of $182,727.47, which can be divided into three areas:

a) legal fees of $49,747.50 plus disbursements of $7,000 (14.1% of legal fees);
b) consulting fees of $99,895 plus disbursements of $12,300 (12.3% of consulting fees);
c) intervenor disbursements of $3,700.

In addition, GST (Goods and Services Tax - 7%), has been applied to all categories, for a total of $12,084.98. At the preliminary hearing on January 19, the proponent agreed to make

advance funding of $25,000 immediately available to SAD, in order that its consultants could proceed to conduct a technical review. It was agreed that this amount is to be treated as an advance against any intervenor funding which is awarded.

SAD was created in April 1991 in response to the plan to expand the site. It has approximately 40 active members, who are residents in the immediate area of the landfill. According to its application, the group has raised the sum of $5,500 since that time. At the preliminary hearing, Mr. Corbett (SAD's counsel) indicated that "as many as 600 people have shown support for the group in the surrounding residential and rural areas" (Transcript, January 19, 1993, p.37).

A financial summary submitted by SAD (Exhibit 3) indicates that revenue of $12,549 has been received by the group since 1991, with a balance of $690 remaining at the end of February, 1993. The summary indicates that members have donated a computer, software, lost wages, supplies and campaign expenses, with a combined estimated value of $9,635. The cost of legal fees, corporate registration, consulting fees and research totalled $5,994 (51% of expenditures).

The issues identified by SAD at the first preliminary hearing were the history of the operation of the site, and conditions of approval which would mitigate impacts arising out of the expansion, if approved. In its funding application, SAD listed several areas as major issues which it will address at the hearing:

1. The waste management master plan development including sufficient attention to the issue of alternatives (without purporting to turn the hearing into a hearing under the [EAA]);
2. the operating history of the landfill;
3. surface water issues;
4. treatment of leachate;
5. proposed conditions for the operation of the landfill in the future in the event that expansion is ordered by the EAB;
6. community involvement and monitoring of the operation.

These issues are among those which were identified by the Board in the Interim Procedural Directions. At the second preliminary hearing, however, Mr. MacLeod advised the Board that SAD would be presenting "significant evidence" with respect to all of the issues identified by the Board in the Interim Procedural Directions (Transcript, vol.2, p.136). This runs counter to a submission by Mr. Wright, on behalf of the proponent, that hydrogeology and site design/operations had been resolved by the parties, subject to fine tuning regarding monitoring and conditions of approval.

The general concerns of the Director, with respect to SAD's application, were that the outstanding issues should be narrowed appropriately before the hearing, no funding should be awarded for issues outside of the proper scope of a Part V (EPA) hearing, and funding awarded should fit within the criteria of the IFPA. Ms. Jack, on behalf of the Director, supported SAD on the issue of eligibility, but pointed out areas of duplication which should be avoided.

The proponent also supported SAD's eligibility, but was critical of the amount claimed. In her submissions, Ms. Hiscock focused on specific portions of the application and raised concerns about duplication. The proponent's position is that a total award of approximately $100,000 would be appropriate, to be reduced by an order for contribution. In effect, the proponent is asking that SAD's claim (before contribution) be reduced by approximately 45%.

The EAB has a policy of encouraging parties to meet, exchange information and attempt, where possible, to resolve outstanding issues prior to hearing. Ms. Hiscock indicated that she was frustrated by SAD's refusal to meet and negotiate with respect to the issues related to the funding application. It appears that Ms. Hiscock made repeated efforts to promote a dialogue with SAD's counsel. In that regard, a few excerpts from her letter of March 11, 1993, are noteworthy (Exhibit 4, tab 23):

> We are writing as we have not received any response to our without prejudice attempts to deal with your client's intervenor funding application and to request clarification with respect to it. ... In the absence of any response from you, we are therefore writing "on the record" to re-iterate our earlier comments and again request clarification.
>
> Our hopes were and continue to be that an agreement can be negotiated and the need for the March 22, 1993 funding hearing avoided.
>
> To that end and with the funding hearing fast approaching, we believe it would be productive for the lawyers, without clients or consultants, to meet as soon as possible. The purpose of such a meeting would be to discuss your client's funding application. Ideally, such a meeting would produce a negotiated settlement which we can both recommend to our clients and submit to the funding panel. In that regard, we suggest Wednesday, March 17, 1993 at 9:30 a.m. at our offices as a possibility. (p.1) ...
>
> Please feel free to communicate with us at your earliest convenience to discuss these matters and to schedule a meeting. (p.9)

Mr. Corbett acknowledged that no response was provided and negotiations did not occur. With respect to SAD's failure to exchange information, he apologized and indicated that he had difficulty obtaining answers, some of which were not available before the funding hearing, and that other personal or family problems (amongst his clients) intervened. As a result, some hearing time was required for Ms. Hiscock and Ms. Jack to ask for and receive information and clarification which ought to have been provided before the hearing.

No explanation was offered for SAD's failure to meet and negotiate. In any event, with two lawyers and a lead consultant on the case, there can be little excuse for SAD to have taken this approach. It violates the spirit of cooperation urged by the Chair of the Board on the first day of the preliminary hearing:

> I also want to make a plea with you that it is very important to be upfront with the issues. ... [W]e are concerned here ... with public interest, with community problems, and we are involved in a process of co-operative decision making. And we all, I think, should count ourselves fortunate that we have an opportunity to contribute to a process of cooperative decision-making.
>
> And in that spirit I hope that no one, in a sense, holds back, and that you put on the table what you feel are the issues so that progress can be made in the pre-hearing processes, very importantly, as well as in the hearing itself, to first of all, get consensus on the issues, secondly, to address them and to resolve them to the greatest extent possible. (Transcript, vol.1, pp.52-3)

It is apparent to me that the proponent was genuinely attempting to negotiate the matter of funding. For example, all of the issues in Mrs. Thompson's application were satisfactorily resolved prior to the hearing. It may be that agreement would have been reached on SAD's application as well, or at least part thereof, had this intervenor attempted to resolve the matter.

There was no dispute raised about.SAD's eligibility for funding under s.7 of the IFPA. I am satisfied that SAD satisfies the criteria listed in s.7(1) and (2).

In the absence of an acceptable and comprehensive agreement between the parties at this stage, it is incumbent on me to evaluate SAD's budget and provide funding only for that work which will be "necessarily and reasonably performed", and which will "assist the board and contribute substantially to the hearing", in accordance with sections 7(3)(a) and 7(2)(b) of the IFPA.

The test to be applied has been described in *Timber Management Funding*, EA-87-02(F), a 1991 decision:

> However, the overriding consideration in coming to a decision on the allocation of the funds was to try to ensure that the funds will be used to enable the participants to assist the Board in its examination of the environmental assessment. (p.13)

More recently, in *Steetley South Quarry Funding*, CH-91-08(F), a funding panel commented as follows:

> We do not agree with the suggestion that the IFPA establishes a standard for funding which necessarily permits a level playing field, funding for all issues and special interests, or an exhaustive examination of the undertaking which leaves no stone unturned. In our view, the purpose of funding is to ensure the adequate representation of those interests which are reasonably necessary for a proper inquiry into the issues which must be examined by the board. The answer to the twin questions of whom to fund, and how much funding to award, should be based upon the funding panel's assessment as to what assistance the hearing board requires to do its job, and whether an intervenor, if funded, will make a substantial contribution to the hearing. (p.11)

(a) Legal Fees

SAD's budget is based on a 20-day (5 weeks at 4 days/week) hearing. However, the Board has set a target of 16 days (4 weeks). At the second preliminary hearing, on March 9, the Board Chair indicated that since a part-time party had withdrawn, the hearing should require even less time than previously anticipated (Transcript, vol.2, p.110). At the funding hearing, Mr. Corbett agreed that a reduction in SAD's funding request is therefore appropriate, although he pointed out that even though the fifth week has been eliminated, the Board has added three evening sessions to the one public evening sitting, by scheduling each Wednesday to conclude at 9 p.m. instead of 5 p.m. This has added nine more hours of hearing time (over the four week period) which had not been included in SAD's budget.

The application requests funding for two counsel to represent SAD throughout the pre-hearing and hearing stages, and states that they are needed because of "the issues and the status of SAD at the hearing". When questioned by the Panel as to why this case would warrant more than one counsel, as is the norm in most cases, Mr. Corbett submitted that there is a great deal of

preparation needed in the short time available before the hearing, and that he cannot manage it without assistance. He pointed out that co-counsel were funded in *OWMC Funding*, CH-87-02(F). In this December 15, 1988 decision, funding for co-counsel and junior counsel was allowed with respect to two intervenors, although I note that the second lawyer in each case was allocated minimal time for hearing attendances. It appears that the purpose of funding the second lawyer was for hearing preparation. In any event, that is a case which is radically different than this one, as it involved an environmental assessment of a province-wide hazardous waste facility. The *OWMC* hearing, not yet concluded, has lasted more than two years.

Although the proponent's position is that the funding of two counsel is reasonable, I find it difficult to reconcile this with Ms. Hiscock's request that I reduce SAD's claim by 45%. The application seeks funding of $23,657.70 for a junior lawyer. Also, the proponent did not oppose SAD's request that its environmental planning consultant, Ian Moncrieff of Consolidated Environmental Group ("CEG"), be funded as a full-time case manager or co-ordinator, at a cost of $36,868.19. The case manager issue is discussed further in section 3(b)(i) below.

The funding of legal fees must be for work "necessarily and reasonably performed", according to s.7(3)(a) of the IFPA. In my view, this case does not appear to involve an unusually complex undertaking. Generally, I would consider making an award of funding for two counsel only in exceptional cases. In this case, the proponent was eager to have the hearing commence at an early date (May 10). At the preliminary hearing, Mr. Wright informed the Board that if the hearing could not be completed before the Fall, the proponent would have to withdraw its application. Mr. Corbett expressed concerns at that time about whether SAD could be prepared by this date.

SAD has obliged the proponent's request for an early hearing date, and the proponent is not opposed to funding for a second lawyer. I have concluded that in view of these circumstances, it would not be unreasonable to provide some funding for a second lawyer, Mr. MacLeod, but only for assistance with case preparation. The request is for 100 hours of pre-hearing preparation, two hours per day of preparation for each hearing day, and 30 hours of weekend preparation during the hearing (total 162 hours). This is in addition to daily attendance at the hearing (30 hours/week x 4 = 120 hours). Ms. Hiscock raised no specific objection to this time allocation. On the other hand, it appears that Mr. Corbett is not unfamiliar with this undertaking, nor are at least two of his consultants. This is discussed in section 3(f) below.

I am prepared to allow 100 hours for Mr. MacLeod, to be used before or during the hearing, to assist Mr. Corbett with preparation. The cost for this item is $6,700 (100 hours x $67).

Mr. Corbett has requested that the senior legal aid rate be applied to him, although he has been in practice for only four years in Ontario. Before that, he practised law in British Columbia for ten years. The Ontario Legal Aid Plan ("OLAP") requires that those lawyers seeking designation as intermediate counsel to have been in practice for at least four years, and for senior counsel, at least ten years. Ms. Hiscock submitted that since Mr. Corbett's experience with Ontario law is limited to four years, the intermediate rate should apply.

Neither Mr. Corbett nor Ms. Hiscock sought clarification from OLAP on this question, to my knowledge. This would have been helpful, in view of the fact that s.7(3)(b) of the IFPA requires me to assess fees in accordance with the OLAP tariff. Under the circumstances, I have decided to allow the senior rate of $83.75/hour for Mr. Corbett. Subject to OLAP's ruling, I believe that his years of experience in British Columbia should not be disregarded. If a ruling is obtained from OLAP indicating that the intermediate rate should be applied in these circumstances, the amount of legal fees can then be recalculated at the lower rate of $75.38/hour.

The next issue is the time allocation for Mr. Corbett. The application seeks funding for 10 hours per day during the hearing, 30 hours for weekend preparation, and 100 hours of pre-hearing preparation, for a total of 290 hours (adjusted for a four week hearing). The Interim Procedural Directions calls for a hearing schedule of 30 hours/week, for a total of 120 hours throughout the hearing. I would add to the hearing schedule 1.5 hours/day to provide for some travel and meeting time during the hearing. This would increase the hearing allocation to 36 hours/week, or 144 hours for the entire hearing. I am prepared to allow an additional 144 hours for preparation undertaken prior to or during the hearing. This would result in a time allocation of 288 hours for Mr. Corbett.

This follows the practice, adopted in some recent funding decisions, in which the estimated hearing time (in hours) is calculated and an equivalent number of hours is added for preparation (for the period preceding and during the hearing). I have taken into account the assistance Mr. Corbett will receive from Mr. MacLeod, the funding allocated to Mr. Moncrieff to provide some assistance as a co-ordinator, and Mr. Corbett's past involvement with this site. I have also considered the fact that SAD is now the only party opposed to the undertaking.

The legal aid tariff provides a reduced rate (64%) for lawyers' travel time. The hourly counsel fee for travel is $53.75 (senior) and $43 (junior). No separate estimation of travel time has been included in SAD's application. It is nevertheless incumbent on SAD's lawyers, in submitting invoices for funding, to delineate time spent in travel and bill it at the reduced rates.

The cost of the time budget allowed for Mr. Corbett therefore totals $24,120 (288 hours x $83.75). The budget for both lawyers is $30,820.

The application seeks disbursements of $7,000 for legal counsel, which is approximately 14.1% of the fees requested. It is frequently the case in funding applications and awards that legal disbursements are calculated at no more than 10% of fees, and I see no reason not to follow this practice. Accordingly, the award will include legal disbursements of $3,082 ($30,820 x 10%).

(b) Consulting Fees

In this category, the application includes three sections, each one dealing with a different consulting firm. The consultants whom SAD has selected are an environmental planner, an engineer and a hydrogeologist. The Director intends to call expert witnesses on most, if not all, of the issues to be considered by the Board. However, the Director is satisfied with the proposed undertaking and is not opposed to it. It appears that SAD will be the only party to call expert evidence in opposition to the undertaking. Clearly, its interest and perspective will be different than that of the Director, City, County and Township. I am satisfied that there will not likely be duplication by the witnesses of other parties.

(i) Consolidated Environmental Group

The principal of CEG, for which funding of $36,868.18 is claimed, is Ian Moncrieff. The budget includes 348.75 hours of his time (the equivalent of 8.7 weeks at 40 hours/week), at $75/hour. The application did not include any information on his professional training or experience, as required by the prescribed form. The filing of a curriculum vitae is a standard practice with the EAB, and would have been of assistance here. The Board was informed at the preliminary hearing that Mr. Moncrieff is an environmental planner and has been advising SAD since 1991. He has donated time to SAD by attending public meetings to explain the nature of

the process. He has also been paid by SAD for services rendered in the past with respect to this landfill.

The application indicates that he will attend the hearing at all times, and his work plan indicates that he will also be involved in case management, meetings (with client, study team and proponent), and other attendances (preliminary hearings, funding hearing, pre-hearing conference, submission of argument and the costs hearing). Mr. Corbett was not in a position to say whether Mr. Moncrieff would be testifying at the hearing.

The role of case manager or co-ordinator is usually undertaken by counsel or the intervenor. Essentially, SAD seeks funding for two team leaders, a lawyer and a consultant. Mr. Corbett defended the request to fund Mr. Moncrieff as both consultant and co-ordinator for the following reasons:

- the time before the hearing is limited, and his assistance is required;
- Mr. Moncrieff must arrange for all attendances and meetings;
- he must provide environmental planning expertise to the other consultants;
- his role as co-ordinator requires him to know in detail the entire case of the proponent;
- in order to brief the clients, Mr. Moncrieff must review all of the proponent's reports, even those being reviewed by other consultants of SAD;
- Mr. Moncrieff must co-ordinate all of the questions for which SAD's members require answers.

Ms. Jack questioned the need to have Mr. Moncrieff spend much time on issues such as "the waste management master plan development" and "the issue of alternatives", which are referred to in SAD's application. In her view, it would be sufficient to have a progress report on, rather than a detailed analysis of, the EAA process. Mr. Corbett replied that the Board had chosen to include these issues in the procedural directions, which refer to "need for the landfill" and "waste management master planning".

Mr. Corbett submitted that there is considerable "environmental planning" which is necessary to prepare SAD's case, and this is Mr. Moncrieff's field. He pointed out that in her non-designation order, the Minister included as a condition that "efforts for effective and meaningful public consultation for the long-term EA and the Part V [EPA] application should continue". The proponent was directed to "obtain public input and address concerns both prior to submitting your application for approval and throughout the process, in both cases".

Ms. Jack also pointed out that Mr. Moncrieff's work plan involves a review of all reports filed by the proponent's consultants, even though an engineer and hydrogeologist will also be reviewing the proponent's technical reports. She emphasized the likelihood that there will be duplication. Mr. Corbett conceded that there would be some duplication, but asserted that this is to be expected where there is a lead consultant co-ordinating the work of other professionals.

The proponent does not oppose Mr. Moncrieff acting in part as a case manager, so long as there is no duplication with the services provided by others. Ms. Hiscock stated that the invoices and dockets submitted would have to demonstrate that the work done was necessary. She was concerned about the apparent duplication of time spent by more than one consultant on the review of the MOEE's historical file of this facility. The proponent is also very concerned that satisfactory efforts are not being made by SAD to scope issues before the hearing. Although scoping would save considerable preparation cost and consulting time, SAD has not yet met with the proponent for this purpose.

I am far from satisfied that two professional managers are required in this case. Nor am I convinced that any duplication with other technical consultants should be funded. In *Steetley South Quarry Funding*, the funding panel made the following observation:

> Duplication during both the pre-hearing and hearing stages must be avoided, not only because the IFPA requires it, but because the amount of funding awards must be balanced with the need to keep the length and cost of hearings within reason. Otherwise, we apprehend that respect and support for the funding and hearing process will be seriously undermined. (p.14)

It is unusual for an intervenor to have a consultant attend the preliminary and funding hearings, and I fail to see the need for it. I do not think that it is necessary for Mr. Moncrieff to attend the pre-hearing conference, the entire main hearing, argument, and the costs hearing (if one is held). If he will not be testifying, I see no reason why he should attend the main hearing at all. Although the proponent has not objected to Mr. Moncrieff assuming the role of case manager, it nevertheless wants the Panel to eliminate all duplication and allow only 55% of SAD's overall budget.

I am not persuaded that the Board is prepared to consider an exhaustive review of the EAA process now under way. The Minister has made effective and meaningful public consultation in both the EPA and EAA processes a condition of her non-designation order, and it would therefore be reasonable at the hearing to examine whether this requirement has been fulfilled.

However, it is another thing entirely to go beyond public consultation and examine in detail the entire ongoing environmental assessment process. If the Board decides that it will benefit from SAD undertaking such an examination, it can award supplementary funding under s.12 of the IFPA.

The work plan for Mr. Moncrieff has been divided into three stages. The first deals with project initiation, the first preliminary hearing, case management, review of planning documents, drafting and editing the issues list, and meetings with the client, study team and the proponent. The time allocated for this stage is 117.75 hours. The second stage includes the second preliminary hearing, the funding hearing, case management and meeting with client, and pre-filed evidence and terms and conditions, for a total of 42 hours. The last stage involves hearing preparation, pre-hearing conference, meeting with client, the hearing (160 hours), argument and costs, for a total of 190 hours.

I do not agree with Mr. Corbett's argument that Mr. Moncrieff must arrange all attendances and meetings, provide environmental planning expertise to the other consultants, and review all of the proponent's reports, despite duplication with other consultants. In my view, this budget appears to be excessive. In particular, the time requested for hearing attendances, which appears to exceed 200 hours, is inappropriate. I am prepared to allow a maximum of 100 hours for preparation and pre-hearing co-ordination and case management, and six days of hearing attendance (6 x 10.5 hours). This includes time for travel, and meetings during the lunch recess. The cost is $12,225 (163 hours x $75).

For disbursements, CEG has allocated $8,300 (23% of fees), which includes word processing ($600), telephone ($500), courier and mail ($400), fax ($500), travel ($6,000) and meals ($300). Generally, items such as word processing are treated as part of overhead. In my view, it is not appropriate to include fixed overhead costs as disbursements. Telephone disbursements should be for long distance only. The charge of $2/page for faxing (CEG's March 9th invoice, Exhibit 4, tab 24) is excessive; 25¢/page seems more appropriate. This is the rate which OLAP allows lawyers to charge. The travel claim was based on 30 trips to London from Chatham (200 km x 27¢), and totals $1,620, not $6,000. In any event, the travel claim must be cut back because of the reduction in time allowed for Mr. Moncrieff.

I do not think that the claim for meals is a necessary expense in this case. Lawyers who are working under the legal aid tariff cannot charge for meals unless they are required to stay overnight out-of-town while working on a case. Presumably, non-overnight meal expenses are

considered as either personal, or part of overhead. I see no particular reason why consultants should be treated any differently than lawyers in this regard.

I am prepared to allow a maximum of $1,834 for disbursements for this consultant, calculated at 15% of fees allowed. I would have capped disbursements at 10%, but for the additional travel expenses to be incurred by Mr. Moncrieff.

(ii) Terraqua Investigations Ltd.

The claim for this firm, $10,738.75, is for work in the field of hydrogeology. The names and expertise of the individuals from this firm, who will be carrying out the work, were not provided in the application, as required. At the funding hearing, Mr. Corbett advised that the consultant from Terraqua is Bill Blackport. The fees ($9,238.75) are based upon 134.5 hours at $62.50/hour, and nine hours at $92.50/hour. Presumably, the nine hours are for a more senior consultant in the firm, but no other details were provided and this was not clarified by Mr. Corbett. The total time of 143.5 hours is equivalent to 18 days (at 8 hours/day) or 3.6 weeks. The work plan indicates that 7.5 days will be spent in the pre-hearing phase, and 10.5 days during the hearing.

Mr. Corbett indicated that about 50% of the budget, or approximately $4,600, has been consumed by work done to date. The proponent's hydrogeology reports have been reviewed. At this time, SAD's consultants have not identified any problems with the hydrogeology of the site. However, the issue of ground water contamination is a big concern to SAD's membership. Mr. Corbett indicated that additional time must be spent by Mr. Blackport in order to explore this concern. A further application for funding might be made in the future in order to permit ground water sampling and testing.

Since the reason for the senior rate of $92.50 was not explained or defended, and the senior consultant was not identified, I am therefore not prepared to allow the nine hours claimed in this category. The estimate of hearing time, at 80 hours should be reduced because it is based on a five week hearing estimate. I have allowed 64 hours for hearing attendances and preparation, and 55 hours for the pre-hearing phase. The cost is $7,437.50 (119 hours x $62.50).

Disbursements claimed ($1,500, or 16.2% of fees) are for travel and meals ($1,200) and copying, telephone and fax ($300). As indicated earlier, I am not prepared to make any award

for meals. No details of the travel claim were provided in the application. Nor has the office or home location of Mr. Blackport been identified, to assist with travel expenses. The work plan indicates that the claim for travel and meals is based on 15 days of attendances, or $80/day.

It is very difficult to assess the disbursements without adequate information. The onus is on the applicant to provide sufficient information and persuade the Panel as to the need for all components of its application. I have allowed $1,116, calculated at 15% of allowed fees, on the assumption that travel expenses will be needed.

(iii) UMA Engineering Ltd.

The claim for this firm was $71,690. The application indicated that David Whitney of UMA "will be retained for landfill expertise and technical issues". At the preliminary hearing, the Board was advised that Mr. Whitney, an engineer, has supplied SAD with background information on technical issues related to this undertaking, and has donated time to SAD by attending public meetings and explaining the nature of the process. He has also been paid for work performed in the past with respect to this site. At the funding hearing, Mr. Corbett advised that Mr. Whitney has a Masters degree in engineering. He will be assisted by Jim Kennedy, a certified engineering technologist with UMA. Mr. Corbett filed a revised work plan for UMA, costing $53,500, dated March 19, 1992 (Exhibit 5). It is based on a five-week hearing.

For technical review of documents and site visit, UMA seeks $29,500. The hourly rate for Mr. Whitney is $100, and for his assistant, Jim Kennedy, the rate is $60. The material contains no explanation as to the need for the work to be undertaken. For example, $10,000 (132 hours) will be spent on the file history of the MOEE (item 1), $2,000 (26 hours) for the non-designation report (item 2), $2,000 (20 hours) for the hydrogeological reports (items 4 and 5), $4,000 (55 hours) for documentation on the regional landfill (Elgin and Middlesex Counties) environmental assessment (item 7), and $1,500 (23 hours) for "all documentation accumulated by SAD" (item 8).

At the hearing, Mr. Corbett filed a 51 page index of the MOEE files relating to this landfill (Exhibit 6). It is necessary at this juncture to indicate that neither Exhibit 5 nor 6 were given to other counsel before the hearing. This resulted in a recess during argument so that these

counsel could review this documentation. This approach is both unfair to other parties and contrary to the information-sharing approach which the EAB expects from parties to its process.

Ms. Jack questioned the necessity for the review of the MOEE historical file. Mr. Corbett replied that the undertaking involves an increase in the landfill's footprint. Since Mr. Whitney is dealing with all of the technical issues involving the landfill, he must be familiar with its history, which is documented in these files. The review is almost complete, with approximately $2,000 of time remaining unspent.

Ms. Hiscock submitted that a review of the non-designation report filed by the proponent is unnecessary, as it was filed two years ago, and is of no particular value now. UMA should not be reviewing hydrogeological reports since that is the reason why Terraqua has been retained. She questioned why UMA would be reviewing planning documents (item 7) when that is Mr. Moncrieff's area. She expressed the same concern with respect to the review of SAD's documentation (item 8).

Mr. Corbett replied that all of the difficult technical review is being carried out by UMA, not by Mr. Moncrieff.

I am not satisfied that 132 hours should be devoted to a review of the MOEE historical files, which comprise 2,673 pages according to CER's invoice of February 1, 1993 (Exhibit 4, tab 19). There may be some documentation worth reviewing, but I would expect that this is limited. I have allowed the time indicated in the table below. Similarly, I have reduced the time for item 2 (non-designation report). I have made no allowance with respect to items 4 and 5, as this relates to hydrogeology. Duplication of funding should be avoided, where possible. I fail to understand why UMA needs to cover this area, in addition to Terraqua. I have made no allowance for item 7 as the EAA process is within Mr. Moncrieff's field. With respect to item 8, it is my understanding that Mr. Moncrieff is in direct contact with the client, and presumably he should be the one to review the documentation they have collected. In the event that some of this material requires review by UMA, I have made a small allowance.

I have allowed the time requested in item 3 for the review of the Design and Operations Report, and the site visit (58 hours). A third consultant, from UMA's Toronto office, Hugh Fraser, is identified in this item. He will spend 12 hours (at $100/hour) to review the storm management plan. The time budget for this item was reduced in Exhibit 5 by 66% from the $15,000 originally claimed in SAD's application. I have allowed the time requested in item 6 with

respect to the treatment potential of leachate at the City's Water Pollution Control Plant (5 hours). I have also allowed the time requested in item 9 for a review of design amendment documentation with respect to the change of footprint (21 hours). Item 10 is for 34 hours of meetings with the clients, team members and briefing of counsel. This appears excessive, and I have reduced the allowable time for this category.

Item	Category	D.Whitney ($100/hr)	H.Fraser ($100/hr)	J.Kennedy ($60/hr)
1.	Review MOEE files (132 hours claimed)	10	20	
2.	Non-designation report (26 hours)	2		4
3.	Design and operations (58 hours)	31	12	15
4.	Hydrogeology (10 hours)			
5.	Hydrogeology (10 hours)			
6.	Leachate treatment at WPCP (5 hours)	5		
7.	EAA documentation (55 hours)			
8.	SAD's documentation (32 hours)	1		3
9.	Design changes - footprint (21 hours)	6		15
10.	Meetings (34 hours)	12		
		67	12	57

With respect to participation at the hearing, 10 days of hearing attendance (on the assumption of a 20 day hearing), at $1,200 per day, has been requested. I am assuming that only Mr. Whitney will be attending. No breakdown of hours or hourly rate was included in the application. For hearing preparation, UMA seeks 7.5 days at $800/day. Mr. Corbett advised that the daily preparation fee is based on Mr. Whitney's hourly rate of $100. The hearing preparation time requested is therefore 60 hours (7.5 days x 8 hours/day). Mr. Corbett advised that the $1,200 attendance fee is based on UMA's standard fee for Mr. Whitney, which does not have an hourly component. I indicated at the hearing (as does the prescribed application form) that funding awards are determined on the basis of the number of hours which have been allocated. With no other information to guide me, I have assumed that attendance fee is based on 12 hours/day, for a total of 120 hours.

With respect to hearing preparation, I believe that three days or 24 hours of preparation should be sufficient. With respect to attendance, I am prepared to allocate five days or 45 hours. UMA is located in nearby London. A budget of nine hours/day should allow sufficient time for travel and meetings during the day. The total time allocated for Mr. Whitney is therefore 91 hours.

In summary, the allocation of time and fees for UMA is as follows:

Preparation -	D. Whitney	91 hours x $100 =	$ 9,100
	H. Fraser	12 hours x $100 =	$ 1,200
	J. Kennedy	57 hours x $60 =	$ 3,420
Hearing -	D. Whitney	45 hours x $100 =	$ 4,500
		205 hours	$18,220

UMA has requested disbursements of $2,500 for "mileage, telephone, photocopying, fax, etc." without providing any breakdown. Travel costs should be nominal for this consultant. Under the circumstances, I see no reason to allow more than 10% of allowed fees, or $1,822, for disbursements.

(c) Intervenor Disbursements

In addition to the disbursements requested for its lawyers and consultants, SAD has requested an additional $3,700 for a list of "incidental expenses". Previous funding decisions have applied s.7(5) of the IFPA to the intervenor's direct disbursement claims (as contrasted with legal and consulting disbursements), thereby limiting them to "eligible disbursements" (any typing, printing, copying and transcripts which the Panel believes is "necessary for the representation of the interest").

This reduces the list of eligible disbursements claimed to $375 for copies and $600 for "transcripts/typists". Mr. Corbett advised that since its formation, SAD has purchased and used two photocopy machines (the first one had to be replaced). The $375 is for paper and copier supplies. Ms. Hiscock advised that since 1991, the proponent has made available a photocopy machine at the Shedden Branch of the Elgin County Library where all reports and other documents related to the undertaking are stored. They are available for the public to review. SAD is entitled to use the photocopier, at no charge, to make copies. Since the proponent has provided photocopying to SAD at no charge for almost two years, there should be little or no other copying expenses for the organization.

Mr. Corbett replied that the hours of service at the library are inconvenient for his clients, and this has required SAD to acquire its own equipment. Ms. Hiscock responded that the proponent has never been informed of any problem with the library's hours; otherwise some other

arrangement would have been made. Neither counsel was able to inform me of the library's hours.

This is an example of the type of duplication which arises when there is insufficient communication between parties. I find the proponent's decision to provide documents and free photocopying at the library to be an innovative step which I have not seen occur in other cases. If the library hours are inconvenient, the proponent (through Ms. Hiscock) has volunteered to consider some other arrangement, and this should eliminate the need for SAD to incur further copying expenses.

The issue of transcripts has been the subject of agreement by the parties. The proponent agreed to supply a copy of the hearing transcript, at its expense, to be kept at the Shedden library where it will be available for inspection by the parties and the public. In addition, the EAB will acquire a copy of the transcript for its offices in Toronto, where it will also be available to the public. Accordingly, I do not see why SAD will need to incur any transcript costs.

Although SAD has been given a computer and software by one of its members, its statement of expenditures (Exhibit 3) does not disclose any expenditure for a typist since the group's formation in 1991. Presumably, typing services have been provided by members as part of the donated time referred to in Exhibit 3. I see no reason why a paid typist should be required now.

(d) GST

GST (Goods and Services Tax) in the amount of $5,290 (7%) has been added to the award of $75,567. According to par.13 of its application, SAD is not a GST registrant and is therefore not entitled to a rebate or credit for the amount of GST which it pays. In the event that SAD is able to register and become entitled to tax rebates, it should provide credit to the proponent (through the Finance and Capital Management Branch of the MOEE) for the full amount of all rebates it receives.

(e) Summary of Award

The award to SAD is comprised of the following categories:

Legal fees	$30,820.00	
disbursements	$ 3,082.00	$33,902.00

Consulting fees		
CER fees	$12,225.00	
disbursements	$ 1,834.00	$14,059.00
Terraqua fees	$ 7,437.50	
disbursements	$ 1,116.00	$ 8,553.50
UMA fees	$18,220.00	
disbursements	$ 1,822.00	$20,042.00
		$76,556.50
GST (7%)		$ 5,358.96
Total:		**$81,915.46**

Although this is far less than the amount requested, and less than the amount of $100,000 suggested by the proponent, I believe that this is nevertheless a substantial and adequate budget. Had it not been for the proponent's support for some funding for a junior counsel and case co-ordinator, the award would have been somewhat smaller.

(f) Contribution

The Panel is required to deduct from any award those "funds that are reasonably available to the applicant from other sources". SAD has not proposed to make any contribution towards an award of funding. Financial statements were not filed with SAD's application, as required by the prescribed form. The Board Secretary contacted SAD's counsel about this, and on March 19 a financial summary (Exhibit 3) was filed. According to the summary, SAD has received revenue of $12,549 and incurred expenditures of $11,859, from the time of its inception until the end of February, 1993. The statement contains a long list of expenses which includes the cost of incorporation, office equipment, supplies, meeting facilities and consultants' fees. According to Mr. Corbett, these fees were paid to Mr. Moncrieff ($1,000), hydrogeologist Wilf Ruland ($700) and student researchers ($2,600).

Mr. Corbett advised that the group is comprised of 25 families (49 individuals). The application states that "hundreds have made contributions to its finances". Each family was asked to contribute $250, but some were unable to do so. The group has undertaken a variety of fund-raising activities, which will continue in the future. Mr. Corbett advised that SAD had approximately $1,000 available at present. It hopes to raise an additional $4,000 this year.

Ms. Jack indicated that she was satisfied that SAD is attempting to raise funds. Ms. Hiscock submitted that since the group has known for almost two years that the undertaking would lead

to a hearing, it should have minimized its expenses and increased its fund-raising efforts in order that it would be capable of making a reasonable contribution to the cost of its intervention. She suggested that SAD had received or could collect funds from other sources.

Prior to the hearing, the proponent questioned SAD (Exhibit 4, tab 23) as to whether the Onyota'a:ka (also known at the Oneida Nation of the Thames Council) was a member of SAD, or was contributing to SAD's intervention. No answer was forthcoming. The Oneida Nation has gone on record as opposing the undertaking, and several young members from that community made a presentation at the preliminary hearing. A letter (Exhibit 4, tab 6) from the Oneida Nation to the Minister, dated July 11, 1991, stated in part:

> We, the Oneida Nation of the Thames Council are very concerned about the non-designation request. We fear that the proposed expansion will bring with it unacceptable environmental impacts. ...
>
> In addition, we request your Ministry's assistance to ensure that Oneida has free access to the landfill site to conduct our own testing. Further, in order to provide such testing, we look to your Ministry for financial assistance.

At the hearing, Mr. Corbett said that no money has been received by him or SAD from the Oneida Nation or its members, although it is possible that one or two members of that community were also members of SAD.

Prior to the hearing, Ms. Hiscock had also inquired of Mr. Corbett about the payment of funds by the City for a workshop dealing with waste management issues. No response was received. Some of the documents in Exhibit 4 indicate that the workshop was organized for the members of SAD and the Oneida Nation by Mr. Moncrieff and presented on December 7, 1991. The cost of the workshop was $5,000, which was paid by the City. According to Mr. Moncrieff's reporting letter of December 11, 1991 (Exhibit 4, tab 11), 20 members of SAD participated and six members of the Onyota'a:ka observed.

Mr. Corbett, who was one of the paid participants at the workshop, replied that the payment went to Mr. Moncrieff, the organizer, not to SAD. He stated that the workshop dealt only with generic process issues, the EAA process, emergency expansion applications, and the role of citizens, but not the proponent's undertaking. Mr. Corbett's role at the workshop did not benefit SAD with respect to preparing for this hearing.

Mr. Corbett's representations about the involvement of the Oneida Nation and the nature of the workshop appear to be inconsistent with the contents of Mr. Moncrieff's letter, which refers to "the intervenor study team", plans for further study of the Green Lane landfill, and the continuing involvement of the Oneida Nation. The subject line in the letter referred to "landfilling and Green Lane Landfill". The letter states, in part:

> It is obvious from the above that considerably more time and effort will be expended by the intervenor study team in order to complete the Terms of Reference. The original budget provided by the Municipalities has already been exceeded and the Oneida Nation have made the obligation to provide any additional funds necessary. This was confirmed at a meeting on December 10th, 1991 at the Oneida Nation with Chief Al Day and Bill Taylor from the Ontario Native Affairs Secretariat.

Attached to the letter is an invoice with the following notation which appears to have been made by the City Administrator: "Upset limit on contribution of municipalities to intervenor funding". The invoice indicates that the payment went to the following participants: Mr. Moncrieff, David Whitney, Wilf Ruland and Mr. Corbett. Further, a memorandum of a meeting of the Technical Advisory Committee on the Green Lane Landfill Site, which took place on December 11, 1991, was filed by the proponent (Exhibit 4, tab 10). Mr. Moncrieff was in attendance at that meeting. The following statements were included in the memorandum:

> The Oneida Nation is currently entertaining a proposal from the Consolidated Environmental Group Ltd. to assist with the environmental planning advisory. ...
>
> The workshop concluded with the agreement that Mr. Moncrieff could retain the $5,000 for the municipality's portion of the independent workshop and consulting assistance to SAD.
>
> The Original budget provided by the municipalities has already been exceeded and the Oneida Nation have made the obligation to provide any additional funds required.
>
> Mr. Bill Taylor from the Ontario Native Affairs Secretariat has been assigned to assist the Oneida Nation, and is acting as a facilitator between the Provincial Government, the Oneida Nation and the Chiefs-in-Assembly. Mr. Taylor confirmed that funding would probably be available at a meeting held December 10, 1991 at the Oneida Nation with Chief Al Day. ...

> As to the financial commitment of the municipalities, Mr. Moncrieff advised that all funding is to be provided by the Province and/or the Department of Indian Affairs, through Oneida for the additional work required prior to the drafting of the terms of reference.

It is apparent that SAD and the Oneida Nation have received the benefit of service from Mr. Corbett, CER and UMA on more than one occasion. On August 27, 1991, Mr. Corbett wrote to the proponent's consultants (Exhibit 4, tab 8) requesting funding of $235,000+ in order to:

- conduct a review of the landfill's operations, the documentation required for an expansion exemption, and the long term waste management plan;
- make recommendations for reduction of solid waste;
- provide legal representation.

He referred to Mr. Moncrieff of CEG and Mr. Whitney of UMA as "the professional consultants".

On May 4, 1992, Mr. Moncrieff wrote directly to the proponent's counsel requesting copies of the EPA application submitted by the proponent. Mr. Wright forwarded the requested information on May 5, 1992 and in his letter (Exhibit 4, tab 15) he referred to Mr. Moncrieff's client as "the Oneida Nation of the Thames".

The events and documents described above raise several questions:

- Did SAD or its consultants receive money from the Oneida Nation at any time for work done or to be done with respect to this site, or with respect to the workshop?
- What work has the "intervenor study team" undertaken with respect to this site?
- What was the nature of the consulting assistance to SAD which was paid for out of the $5,000 from the City?
- What funding was given by the Province of Ontario or the federal Department of Indian Affairs to the Oneida Nation for any projects, work or services related to this site?
- What work did Messrs. Moncrieff, Whitney, Ruland and Corbett undertake for the Oneida Nation (or SAD) with respect to this site, and when?

These questions are relevant not only to the issue of contribution by SAD, but also the extent to which SAD's advisors have already been paid to study the site and the proponent's documents. Less intervenor funding for preparation should be required at this stage if substantial preparatory work was undertaken before the commencement of EAB proceedings.

I can understand why the proponent is of the view that there may be additional and undisclosed funds which have been paid (or are available) to SAD and/or its advisors with respect to this site. The documentation in Exhibit 4 tends to support that view. The EAB process relies in large measure on voluntary disclosure and sharing of reliable information amongst parties. The prescribed application form requires that financial statements disclose all sources and use of funds. When this does not occur, informed and responsible decision-making is made more difficult.

In order to resolve the uncertainty that exists, it is important to determine whether funds from any source, not already disclosed to this Panel, have been received by SAD or its professional advisors for work undertaken with respect to this site. The nature and extent of that work is quite pertinent to the issues which this Panel must decide.

However, I do not wish to delay the funding award of funding, as that may result in a substantial delay of the commencement of the hearing. For that reason, I have decided to release my decision but include a condition (par.6), made pursuant to s.7(4) of the IFPA, requiring SAD and its advisors to make immediate and full disclosure to the proponent with respect to these questions. In the event that the proponent is satisfied with the information received, nothing further need occur. In the event that proponent is not satisfied, it should notify the Board Secretary in writing of its concerns, and send a copy to SAD, its counsel and the other parties.

This leaves the issue of SAD's contribution, if any, to the funding award. Mr. Corbett submitted that recognition should be given for the time, effort and money contributed by SAD members, such that no contribution be required. He referred to a participant funding decision dated January 4, 1993 in *Niagara Road 12 Site Participant Funding Program*, OC-92-01(F), in which no contribution was required for this reason.

There are two significant distinctions in the *Niagara Road* case. The first is that the proponent agreed that no contribution should be required:

> The Proponent reiterated there is a history of extensive, unpaid community involvement in the waste management master planning process. As a result, it was agreed the time spent by the community members working on the preparation of the community impact agreement will replace any requirement to raise funds. (p.6)

The second is that participant funding is an advance program which may be followed by a full hearing process, involving intervenor funding under the IFPA. There is another opportunity in the IFPA funding program to address contribution by intervenors.

Ms. Hiscock maintained that a contribution of $1,000 for each family member (for a total of $25,000) would be appropriate. Mr. Corbett replied that a contribution of this magnitude would result in either SAD withdrawing as an intervenor, or its lawyers and consultants subsidizing its intervention.

It is appropriate, in my view, that SAD make a reasonable contribution to its funding award, even though it has spent most of the funds it has raised since 1991, and time, energy and equipment have been donated by its members to date. Section 7(3)(c) of the IFPA requires that an award be reduced by those funds "that are reasonably available to the applicant from other sources". However, I am not satisfied that SAD's members will be able to make the level of contribution suggested by Ms. Hiscock. There is little evidence upon which to make such a finding. As it is important to foster public participation in the hearing process, the requirement of a monetary contribution should not create an obstacle for an intervenor which is making reasonable efforts. On the other hand, I believe that it is appropriate to take into account the 600 people who may be able to provide further support to SAD, as well as the financial assistance which the Oneida Nation might provide. It appears that SAD has a considerable base to draw on for financial support.

In my view, it is reasonable to require SAD to make a 10% contribution ($8,191.55) towards the cost of its intervention. In submitting claims for payment pursuant to this award, SAD will be required to make its contribution by paying 10% of each invoice.

(g) The Advance

At the preliminary hearing on January 19, 1993, the proponent confirmed that it would immediately establish a fund in the amount of $25,000, which would be available to fund SAD's consultants until such time as a funding award was made. It was understood that any draws made against the fund would be credited against the amount awarded. At the time of the funding hearing, $8,749.06 had been advanced.

A dispute arose prior to the funding hearing about a portion of the first invoice, dated March 9, 1993 (Exhibit 4, tab 21) submitted to the advance fund. As a result, the amount of $1,058.25 (plus GST), with respect to work done by Mr. Moncrieff's assistant for photocopying of the MOEE file, was deducted. Ms. Hiscock was concerned that this work was carried out in February 1992, and therefore prior to the commencement of proceedings before the EAB.

Mr. Corbett submitted that the photocopying was done in January 1993, after the MOEE file was borrowed from the Oneida Nation (which had obtained it in February, 1992) for that purpose. It would appear that this response resolves the issue, and the additional amount can now be advanced by the proponent, subject to the terms of this decision.

4. The Application of Mrs. Greta Thompson

At the preliminary hearing, Mrs. Thompson, through her counsel, indicated that the hearing issues of interest to her are leachate collection and treatment, ground water and surface water impacts, the relationship of the undertaking to the long-term waste management planning process under the EAA, and compliance with MOEE policies. In addition, her application refers to monitoring parameters (frequency and reporting), and terms and conditions. These issues have been identified in the Interim Procedural Directions.

She requests funding for 85 hours of legal representation (at the intermediate counsel rate of $75.38/hour) plus disbursements, for a total of $7,925.81. No financial contribution is contemplated in the application. This request is based on an estimate of 1.5 days (at 8 hours/day) of preparation and hearing attendances over a five week period, plus 25 hours of pre-hearing preparation and attendances. With respect to transcripts from the hearing, the applicant has agreed to review them at the EAB office or the Shedden library.

The application describes Mrs. Thompson as someone with considerable experience in waste management and land-fill related issues, and on-site and off-site waste management practices and problems. She has advocated reforms at the local, regional and provincial level. In Kent County, where she resides, she co-founded a citizens' group concerned with disposal of liquid industrial waste, participated in an EAB hearing with respect to the Ridge Landfill, was a member of a citizens liaison committee for that site, and has continued to be involved with such issues as monitoring, mitigation, contingency planning, compensation, investigation and enforcement.

Although she proposes to work with SAD so that their respective interventions will "dovetail", she maintains that her unique experience and interest, and different perspective, makes a separate representation necessary. She concedes that some of her issues are similar to those of SAD and other parties. Rather than calling any expert witnesses on her own, she proposes to confer with SAD's consultants.

Neither Mrs. Thompson nor her counsel appeared at the funding hearing because an agreement had been reached with the proponent. Mrs. Thompson agreed to contribute 10% of the award from her own funds pursuant to s.7(3)(c) of the IFPA. Any invoices submitted for payment of funding are therefore to be reduced by 10%. There was no opposition from the Director or SAD.

In view of the agreement of the parties, I have allowed the award of intervenor funding to Mrs. Thompson. Since Ms. Hiscock was unable to explain why the disbursements payable to Mrs. Thompson should attract GST, I have deleted this item. The award is as follows:

legal representation: 85 hours x $75.38	=	$6,407.30
legal disbursements	=	$ 500.00
		$6,907.30
GST (7%)		$ 483.51
intervenor disbursements		$ 100.00
		$7,490.81

5. The Process

More than a week prior to the hearing, the proponent's counsel circulated a 9-page letter dated March 11th (Exhibit 4, tab 23) identifying her concerns about SAD's application. This letter was a most useful tool as it enabled SAD and the Panel to focus on the proponent's concerns during the hearing.

The procedure followed at the hearing began with submissions on behalf of SAD. Other counsel were then entitled to ask questions, through the Panel, of Mr. Corbett in order to clarify points or obtain further information. Submissions were then made on behalf of the Director and the proponent. Finally, Mr. Corbett was entitled to reply to any new points raised during the argument of other counsel.

It may be constructive to make a few suggestions with respect to the events which unfolded in this matter. By agreeing to an early hearing date, the parties left no opportunity for a two-stage funding process, which was employed recently in *Guelph Funding*, EP-92-02(F). In its decision after the first phase, the funding panel stated:

> The panel believes it is reasonable to phase the funding hearing and believes it is a more efficient and accountable use of public funds. (p.4)

In a single phase funding process, the funding hearing often takes place before intervenors are able to identify the funding they require. As a result, it appears that they occasionally feel compelled to ask for more money and to cast a wider net than they otherwise might. It seems to me that the more time that is provided between the preliminary hearing and the funding hearing, whether it be phased or not, the more likely it is that intervenors will be well organized and better focused with respect to their funding objectives and needs.

The EAB expects that funding applications will be completed with full particulars including the name of each consultant to be used and a curriculum vitae. In their work plans, consultants should indicate not only what steps they intend to take, but why these steps are necessary. Overlap between the work to be undertaken by different consultants must be avoided, so that there is no duplication. The application should make full disclosure of the nature and cost of work undertaken at any time by counsel or consultants, outside of the IFPA program, in connection with the proposed undertaking.

Parties are expected to request any information and clarification required from other parties prior to the hearing, and those requests should be answered promptly. Parties are expected to meet well in advance of the funding hearing in an effort to narrow or eliminate the issues in dispute. These steps can contribute to a smoother, shorter and more efficient process. They can also eliminate the need for funding hearings altogether, in some cases.

Documents which are to be filed at the hearing should be circulated to other parties before the hearing so that they will have the opportunity to review them and make inquiries before the commencement of the hearing. If decisions of the EAB or court decisions are to be relied upon in argument, copies should be given to the other counsel at least one day before the commencement of the hearing, so that they can review them.

The objective is to prevent delay and surprise. A party cannot provide helpful analysis to the funding panel if it has had little or no time to consider and react to documents and decisions relied upon by other parties.

DECISION

1. St. Thomas Sanitary Collection Service Limited is named the funding proponent.

2. Intervenor funding in the amount of $81,915.55 is awarded to Southwold Against Dumping Inc. ("SAD"), to be allocated in the manner set out in Schedule A which is attached to and forms part of this decision.

3. Thomas J. Corbett and the law firm of Harrison Elwood are responsible for the accounting for the funds awarded to SAD. The amounts awarded shall be used only for the purposes set out in Schedule A and the Reasons for Decision.

4. When submitting claims for payment, SAD shall acknowledge its responsibility for payment of the portion which it has been required by this decision to contribute, namely, 10% of the amount of each invoice.

5. (a) The amounts paid on behalf of SAD from the advance fund of $25,000, established by the proponent, shall be credited against the award made herein. The proponent shall submit to the Finance and Capital Management Branch of the Ministry of the Environment and Energy full details and documentation of all advances made to SAD out of the advance fund.

   (b) The contribution by SAD of 10% has not been made for the amounts which were paid from this fund. The accumulated contribution should be made by deducting it from the next advance made after the release of this decision.

6. SAD and its advisors shall forthwith make full disclosure to the proponent with respect to the following:

   (a) whether funds from any source(s), not already disclosed to the funding panel, have been or will be received by SAD or any of its professional advisors, for work undertaken at any time with respect to the Green Lane Landfill;

   (b) the name of the source(s) referred to in par. 6(a);

   (c) the nature and extent of the work undertaken as a result of the funds referred to in par. 6(a).

7. Intervenor funding in the amount of $7,490.81 is awarded to Greta Thompson, to be allocated in the manner set out in Schedule B which is attached to and forms part of this decision.

8. Richard Lindgren and the Canadian Environmental Law Association are responsible for the accounting for the funds awarded to Mrs. Thompson. The amounts awarded shall be used only for the purposes set out in Schedule B and the Reasons for Decision.

9. When submitting claims for payment, Mrs. Thompson shall acknowledge her responsibility for payment of the portion which she has been required by this decision to contribute, namely, 10% of the amount of each invoice.

10. SAD will provide Mrs. Thompson and her counsel with liberal access to its consultants and related documentation, in order that they will be able to adequately prepare for and participate in the hearing.

11. The name, curriculum vitae and work plan for each expert/consultant to be retained in accordance with this Decision must be promptly submitted to the Board. If there is a proposed change of any expert/consultant, the name, curriculum vitae and work plan of each new expert/consultant must be promptly submitted to the Board.

12. Claims for funds pursuant to this award shall be made in accordance with the Environmental Assessment Board's *General Principles for the Submission of Claims*.

13. Claims for funds are to be submitted monthly to the Finance and Capital Management Branch, Ministry of the Environment and Energy using the *Request for Funds Form* provided.

14. Any GST rebates received by the funded intervenors or their counsel, and not taken into account in this decision, shall be returned to the Finance and Capital Management Branch for remittance to the proponent.

15. At the end of the hearing, or the end of an intervenor's participation in the hearing if it occurs earlier, each funded intervenor shall submit a financial report to the Hearing Panel and account for all funds received by way of intervenor funding.

DATED at **TORONTO** this **6th day** of **APRIL, 1993.**

Alan Levy, Chairman

Funding Allocation

Intervenor: Southwold Against Dumping (SAD)

LEGAL	HOURS	RATE/HR.	TOTAL FEES	GST @ 7%	TOTAL
		$	$	$	$
Senior counsel	288	83.75	24,120.00	1,688.40	25,808.40
Junior counsel	100	67.00	6,700.00	469.00	7,169.00
Disbursements			3,082.00	215.74	3,297.74
Total (legal)			33,902.00	2,373.14	36,275.14

EXPERTS AREA OF STUDY	HOURS	RATE/HR.	EXPERT FEES	DISBUR.	GST @ 7% FEE + DISB	TOTAL
		$	$	$	$	$
1. CER	163	75.00	12,225.00	1,834.00	984.13	15,043.13
2. Terraqua	119	62.50	7,437.50	1,116.00	598.75	9,152.25
3. UMA – D. Whitney	136	100.00	13,600.00	1,822.00	1,079.54	16,501.54
4. UMA – H. Fraser	12	100.00	1,200.00	0.00	84.00	1,284.00
5. UMA – J. Kennedy	57	60.00	3,420.00	0.00	239.40	3,659.40
Total (Experts)			37,882.50	4,772.00	2,985.82	45,640.32

INTERVENOR DISBURSEMENTS	DISBUR.	GST@7%	TOTAL
	$	$	$
Printing	0.00	0.00	0.00
Photocopying	0.00	0.00	0.00
Transcripts	0.00	0.00	0.00
Total (Disbursements)	0.00	0.00	0.00
Sub–Total Allocation:		**5,358.96**	**81,915.46**
Intervenors Contribution (10%):			**8,191.55**

TOTAL FUNDING ALLOCATION: **73,723.91**

PERSON/FIRM RESPONSIBLE FOR FUNDS:

Thomas J. Corbett
Harison, Elwood
Barristers and Solicitors
450 Talbot Street, 2nd Floor
P.O. Box 3237
London, Ontario N6A 4K3
Tel.: (519)960–2284
Fax: (519)663–9341

Note: Note: SAD will be required to pay 10% of each invoice submitted.

Funding Allocation

Intervenor: Mrs. G. Thompson

LEGAL	HOURS	RATE/HR.	TOTAL FEES	GST @ 7%	TOTAL
		$	$	$	$
Senior Counsel					
Intermediate counsel	85	75.38	6,407.30	448.51	6,855.81
Junior counsel					
Law clerk/student					
Disbursements			500.00	35.00	535.00
Total (legal)			6,907.30	483.51	7,390.81

EXPERTS AREA OF STUDY	HOURS	RATE/HR.	EXPERT FEES	DISBUR.	GST @ 7% FEE + DISB	TOTAL
		$	$	$	$	$
1.						
2.						
Total (Experts)			0.00	0.00	0.00	0.00

INTERVENOR DISBURSEMENTS	DISBUR.	GST@7%	TOTAL
	$	$	$
Typing	50.00	0.00	50.00
Photocopying	50.00	0.00	50.00
Total (Disbursements)	100.00	0.00	100.00

Sub–Total Allocation:	7,490.81
Intervenors Contribution (10%):	749.08
TOTAL FUNDING ALLOCATION:	**6,741.73**

PERSON/FIRM RESPONSIBLE FOR FUNDS:

Richard D. Lindgren
Canadian Environmental Law Association
517 College Street
Toronto, Ontario M6G 4A2
Phone: (416) 960–2284
Fax: (416) 960–9392

Note: Any invoices submitted for payment of funding are to be reduced by 10%.

EP-92-06(F)

Appendix I

GREEN LANE LANDFILL FUNDING

EXHIBIT LIST

1. Application of Greta Thompson, February 3, 1993
2. Application of Southwold Against Dumping Inc., February 5, 1993
3. Financial Report of SAD, March 20, 1993
4. Funding Proponent's Document Brief
5. Memorandum from UMA Engineering Ltd., March 19, 1993
6. Document Summary from MOEE File, February 3, 1992

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Ontario. Environmental Assessment Board.
EO-92-06(F)
GREEN LANE LANDFILL DECISION AND REASONS FOR
1993.

RESOURCE CENTRE
INST. FOR ENVIRON'L. STUDIES
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